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# **NEWPORT BEACH**

## **City Council Staff Report**

July 25, 2017  
Agenda Item No. 19

**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

**FROM:** Kimberly Brandt, Community Development Director - 949-644-3232, kbrandt@newportbeachca.gov

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**TITLE:** Amendments to the City's Regulations Regarding Accessory Dwelling Units (PA2017-069)

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**ABSTRACT:**

Amendments to the Zoning Code and Local Coastal Program revising the City's regulations pertaining to Accessory Dwelling Units (ADU) to conform to recent State legislation that went into effect on January 1, 2017. Specifically, the amendments would establish regulations permitting the development of ADUs in single-family residential zoning districts.

**RECOMMENDATION:**

- a) Conduct a public hearing;
- b) Find this project statutorily exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15282(h) of the CEQA Guidelines, which states that the adoption of an ordinance regarding second units to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code are exempt from the requirements of CEQA;
- c) Introduce Ordinance No. 2017-11, *An Ordinance of the City Council of the City of Newport Beach, California, Adopting Zoning Code Amendment No. CA2017-003 to Implement New State Law Requirements Relating to Accessory Dwelling Units (PA2017-069)*, and pass to second reading on August 8, 2017; and
- d) Adopt Resolution No. 2017-51, *A Resolution of the City of Newport Beach, California, Authorizing the Submittal of Local Coastal Program Amendment No. LC2017-003 to the California Coastal Commission Implementing New State Law Requirements Relating to Accessory Dwelling Units (PA2017-069)*.

**FUNDING REQUIREMENTS:**

There is no fiscal impact related to this item.

## **INTRODUCTION:**

In 2016, the State Legislature amended California Government Code Section 65852.2 (State Law) related to ADUs, which took effect on January 1, 2017 (Attachment C). The new regulations are intended to reduce barriers to the development of ADUs, which have been found to be an affordable-by-design type of in-fill housing that can meet the needs of couples, small families, young people, students, and seniors by offering new below-market rentals in existing neighborhoods. In addition, homeowners who create ADUs may benefit from added income and an increased sense of security.



Fig. 1 Attached ADU Over Garage Example



Fig. 2 Detached ADU Example

The City regulates ADUs through Section 20.48.200 of the Newport Beach Municipal Code (NBMC) (Attachment D), which prohibits second units, unless they are age-restricted to persons 55 years or older (Senior Accessory Dwelling Units). These restrictions, as well as other City regulations, do not comply with the new State law and are now considered null and void. Therefore, the City must use the State's more lenient ADU standards until such time the City modifies its regulations appropriately (see *Interim Standards* section).

The State standards require ministerial approval (no discretion or public hearing) of an ADU in single-family and multi-family zones where only a single-family unit is present, provided other minimal standards are met. Upon City Council's adoption of the proposed ordinance regulating ADUs, the City will have the ability to regulate additional aspects of ADUs, such as location, lot size, unit size, parking, and aesthetics, depending on circumstances.

## Background

The State law addressing ADUs was first enacted in 1982, and it has been amended several times since then to encourage the creation of second units while maintaining local flexibility for unique circumstances and conditions. The law imposed standards intended to create greater flexibility to encourage construction while also requiring a ministerial process for the approval of such units. However, the law previously included an exemption allowing local agencies to prohibit ADUs upon finding that specific adverse impacts on the public health, safety, and welfare would result. City Council Ordinance No. 88-39 (Attachment E) adopted such findings and prohibited the creation of second units, which has remained in effect until the recent legislation took effect on January 1, 2017.

## Planning Commission Action and Community Outreach

The Planning Commission considered the proposed amendments on May 4, 2017; however, staff was unable to display the presentation related to the proposed amendments, which made explaining the complex program challenging. The Planning Commission ultimately decided to continue the agenda item to June 8, 2017, to allow staff to return with a presentation and to allow for additional public outreach (Attachment F – Hearing Minutes). At the conclusion of the June 8, 2017, hearing, the Planning Commission voted 4-1 to recommend approval of the proposed amendments to the City Council (Attachment G – Hearing Minutes).

## **DISCUSSION:**

### Interim Standards Comparison to Proposed City Standards

Until the City adopts an ordinance compliant with State Law, the City must ministerially approve ADUs in all single-family and multi-family zones where only a single-family unit is present. The underlying development standards of the district would continue to apply, with the exception of certain specific exemptions and minimal standards regulating the ADU itself. The standards that apply depend on whether the proposed ADU will be newly constructed or converted from an existing living space.

The standards applicable to ADUs developed through additions or new construction are summarized in Table 1. The standards applicable to ADUs converted from an existing living space are summarized in Table 2. In addition, both tables include a comparison of the proposed City modifications to each standard. These standards are explained in detail in Attachment H.

<b>Table 1- Comparison of State Standards and Proposed City Standards ADUs Requiring Additions or New Construction</b>		
<b>Standard</b>	<b>State Standards</b>	<b>Proposed City Standard</b>
<b>Location</b>	Permitted on lots zoned for both single-family or multi-family residential. ADU must be located on same lot.	Single-family residential zoning districts and similar Planned Community or Specific Plan areas. ADUs would be prohibited in two-family and multi-family zoning districts.
<b>Minimum Lot Size</b>	No standard.	5,000 square feet or greater.
<b>Unit Size</b>	Limited as follows: <ul style="list-style-type: none"> <li>○ <i>Attached ADU</i>- 50 percent of existing living area, with a maximum of 1200 square feet.</li> <li>○ <i>Detached ADU</i>- 1200 square feet.</li> </ul>	750 square feet maximum, or 50 percent of the existing floor area (excluding garage) of the principal unit, whichever is less.
<b>Aesthetics</b>	No standard.	<i>Height and Design</i> standards added to minimize appearance of two units on the lot.
<b>Passageways</b>	Not required. This is an exemption from Building Code requiring a pathway, clear to the sky, from street to entrance of ADU.	Per State standard.
<b>Setbacks</b>	Setbacks are not required for an existing garage that is converted to an ADU, and a setback of no more than 5 feet from a side or rear lot line is required for an ADU that is constructed above a garage.	Per Zoning Code, except as modified by State standard.
<b>Parking</b>	A maximum of one space required per unit or bedroom, whichever is greater. Spaces may be provided as uncovered parking, tandem parking on driveway or mechanical lifts. No parking required if within half-mile of public transit stop or one block of a car-share vehicle program.	Per State standard, except parking in rear alley setback prohibited and additional clarifications added.
<b>Fire Sprinklers</b>	ADUs are not required to provide fire sprinklers if they were not required for the principal residence.	Per State standard.
<b>Utilities</b>	Connection fees or capacity charges must be proportionate to the impact of the ADU based on either its size or number of plumbing fixtures.	Per State standard.

Table 2- Comparison of State Standards and Proposed City Standards ADUs Contained Entirely within Existing Structures		
Standard	State Standards	Proposed City Standards
Location	Within an existing single-family residence or accessory structure on a single-family residential zoned lot.	Same; cannot be modified.
Unit Size	No limitation.	Same; cannot be modified.
Parking	No additional parking required.	Same; cannot be modified.
Utilities	No new or separate utility connections or connections fees.	Same; cannot be modified.

#### General Plan Consistency

State law indicates that ADUs shall be deemed an accessory use and shall not be considered to exceed the allowable density for the lot upon which it is located, and shall be deemed a residential use that is consistent with the existing general plan and zoning district for the lot. Therefore, no amendments to the General Plan are required.

#### Local Coastal Plan – Coastal Commission Collaboration

Similar to the Zoning Code, the Implementation Plan of the Local Coastal Program (LCP), currently regulates ADUs inconsistent with State law. Therefore, corresponding amendments to the LCP are required, including the addition of a new policy, which reads as follows:

**2.7-5.** *Administer the provisions of Government Code Section 65852.2 relative to the development of accessory dwelling units to increase the supply of lower-cost housing in the coastal zone and meet the needs of existing and future residents, while respecting the architectural character of existing neighborhoods and in a manner consistent with the LCP and any applicable policies from Chapter 3 of the Coastal Act.*

Staff notes that the Coastal Commission will need to review and approve the proposed amendments to the LCP. Staff sent a Notice of Availability for the amendment to the Coastal Commission staff on April 27, 2017. In response to their feedback, City staff revised the amendment as currently proposed in Attachment B and sent the revisions to the Coastal Commission staff on May 2, 2017, requesting their input. The City has not received any comments as of the publication of this report.

In the interim, any eligible projects located in the Coastal Zone that qualify for a Coastal Development Permit (CDP) exemption will be processed consistent with the Zoning Code. Projects that do not qualify for an exemption cannot be processed until the LCP Amendment is approved and adopted.

### Alternatives

The City Council may recommend revisions to the draft ordinance or resolution, such as changing where ADUs are allowed, minimum lot size, maximum unit sizes, design standards, etc., provided the revisions are consistent with State law limitations and are not arbitrary, excessive, and burdensome, and do not unreasonably restrict the creation of ADUs.

### **ENVIRONMENTAL REVIEW:**

The project is exempt from environmental review under the California Environmental Quality Act ("CEQA") pursuant to Public Resources Code Section 21080.17 and CEQA Guidelines Section 15282(h), which states that the adoption of an ordinance regarding second units in a single-family or multifamily zone by a city or county to implement the provisions of Sections 65852.1 and 65852.2 of the Government Code" relating to "granny" housing and "second unit ordinances" are exempt from the requirements of CEQA. Similarly, the ministerial approval of ADUs would not be a "project" for CEQA purposes, and environmental review would not be required prior to approving individual applications.

### **NOTICING:**

Notice of this amendment was published in the Daily Pilot as an eighth page advertisement, consistent with the provisions of the Municipal Code. The item also appeared on the agenda for this meeting, which was posted at City Hall and on the City website. Additionally, notice was sent to all persons and agencies on the Notice of the Availability mailing list.

### **ATTACHMENTS:**

Attachment A – Draft Ordinance (Zoning Code Amendment)  
Attachment B – Draft Resolution (Local Coastal Program Amendment)  
Attachment C – Government Code Section 65852.2 (ADU Law)  
Attachment D – Former Senior ADU Regulations (NBMC Sec. 20.48.200)  
Attachment E – City Council Ordinance No. 88-39  
Attachment F – May 4, 2017, Planning Commission Minutes  
Attachment G – June 8, 2017, Planning Commission Minutes  
Attachment H – Description of Proposed Zoning Code Modifications